

Message Text

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12

ORIGIN L-03

INFO OCT-01 AF-10 ISO-00 SCA-01 CPR-02 TRSE-00 RSC-01 EB-11

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DRAFTED BY L/M/SCA:CLBLAKESLEY:MA

APPROVED BY L/M/SCA:KEMALMBORG

S/CPR:MCKEATING

AF/E:GGAY

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R 282246Z NOV 73

FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI

UNCLAS STATE 233750

E.O. 11652, N/A

TAGS: EFIN, KE

SUBJECT: INCOME TAX EXEMPTION FOR SHIPOWNERS

REF: NAIROBI 7964

1. QUESTIONS IN REFTEL ARE ANSWERED AS FOLLOWS, WITH THE QUALIFICATIONS DESCRIBED BELOW:
2. NO, THERE IS NO SPECIFIC AGREEMENT PROVIDING FOR MUTUAL EXEMPTION FROM TAXES TO SHIPOWNERS BETWEEN UNITED STATES AND KENYA.
3. YES, THE COMBINED WORDING OF SECTION 883 OF THE U.S. INTERNAL REVENUE CODE AND ITEM 21 OF HEAD A TO PART I OF THE FIRST SCHEDULE TO THE EAST AFRICAN INCOME TAX MANAGEMENT ACT 1958 WOULD MAKE SUCH AN AGREEMENT UNNECESSARY ON FOLLOWING CONDITIONS.

A. THAT THE SHIP IN QUESTION BE DOCUMENTED IN THE STATE WHICH HAS THE EQUIVALENT EXCLUSION FOR THE UNITED STATES.

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B. THAT THE CORPORATION BE INCORPORATED IN THE SAME

STATE.

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THE EXCLUSION IN THE U.S. INTERNAL REVENUE CODE IS MORE

RESTRICTIVE THAN THAT IN THE EAST AFRICAN ACT IN THE SENSE THAT THE LATTER ALLOWS EXEMPTION FOR ANY NON-RESIDENT WHOSE STATE OF RESIDENCE AFFORDS RECIPROCAL EXEMPTIONS TO KENYAN RESIDENTS, WHEREAS THE U.S. EXCLUSION EXISTS ONLY IF THE SHIP IS DOCUMENTED IN KENYA, ITS CORPORATION INCORPORATED IN KENYA AND KENYA AFFORDS RECIPROCAL EXEMPTION TO A U.S. CITIZEN OR CORPORATION.

4. ANOTHER PROBLEM WITH RECIPROCITY BETWEEN THESE STATES UNDER THIS ACT IS THAT APPARENTLY, UNDER THE EAST AFRICAN ACT, A U.S. CITIZEN WOULD NOT RECEIVE THE EXEMPTION IF HE WERE NOT RESIDENT IN U.S. A PROBLEM IN INTERPRETING THE LANGUAGE OF THE EAST AFRICAN ACT IS THAT DEPARTMENT HAS NO WAY OF KNOWING HOW QTE RESIDENT UNQTE IS DEFINED UNDER SAID ACT. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TAX LAW, STEAMSHIP LINES, TAX AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 28 NOV 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE233750
Document Source: CORE
Document Unique ID: 00
Drafter: CLBLAKESLEY:MA
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t1973117/aaaaaesd.tel
Line Count: 81
Locator: TEXT ON-LINE
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: NAIROBI 7964
Review Action: RELEASED, APPROVED
Review Authority: willialc
Review Comment: n/a
Review Content Flags:
Review Date: 28 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <28-Jan-2002 by bryansd0>; APPROVED <19 FEB 2002 by willialc>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: INCOME TAX EXEMPTION FOR SHIPOWNERS
TAGS: EFIN, ETRN, KE, US
To: NAIROBI
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005